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December 21, 2001

BY ELECTRONIC FILING

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W. TW-A325
Washington, D.C. 20554

Re: Ex Parte Presentation; IB Docket No. 00-248

Dear Ms. Salas:

We are writing on behalf of Hughes Network Systems, Hughes Communications, Inc. and Hughes Communications Galaxy, Inc. (together “Hughes”) to address an issue in this proceeding concerning Section 25.277 of the Commission’s Rules.¹ In the Notice of Proposed Rulemaking in this docket,² the Commission noted the existence of some confusion regarding whether temporary fixed earth stations can be licensed under a VSAT network blanket license. The Commission tentatively concluded that no technical reason exists to preclude the licensing of temporary fixed facilities either as a hub or as a remote terminal in the Ku-band and invited comment on revising Section 25.277 to clarify the conditions under which such temporary fixed VSAT networks should be licensed.³

The Commission tentatively concluded that temporary fixed VSAT applications should be granted only in the conventional Ku-band, which is not shared with terrestrial services. In addition, the Commission proposed a requirement whereby applicants must specify in their applications that they are requesting authority to use a temporary fixed earth station as part of a VSAT network.⁴

¹ 47 C.F.R. §25.277.

² *In the Matter of 2000 Biennial Review – Streamlining and Other Revisions of Part 25 of the Commission’s Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, Notice of Proposed Rulemaking, IB Docket 00-248, FCC 00-435 (released Dec. 14, 2000) (“NPRM”).

³ NPRM at ¶60.

⁴ NPRM at ¶61.

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The Satellite Industry Association (“SIA”), in its May 7, 2001 Reply Comments in this docket,⁵ agreed that there is no technical reason to prohibit the operation of a temporary fixed earth station facility either as a VSAT hub or VSAT remote unit in the conventional Ku-band. SIA believed that the Commission should allow these facilities to be licensed as a temporary fixed VSAT network or as part of a traditional VSAT network.⁶ Hughes concurs with these comments of the SIA.

After further review of Section 25.277 of the Commission’s Rules, Hughes would like to offer additional comments regarding the licensing of temporary fixed VSAT earth stations in the Ku-band. Specifically, Section 25.277(e) provides that “[o]perations of temporary fixed earth stations shall cease immediately upon notice of harmful interference from the Commission or the affected licensee.”⁷ The origin of this subsection is the Commission’s Order in *Western Tele-Communications, Inc.*⁸ In this case, the Commission permitted the use of temporary fixed earth stations in the C-band, without prior frequency coordination, provided that the earth station operator notify potentially affected terrestrial operators before commencing operations and immediately stop transmitting upon notification of harmful interference.⁹ Essentially, the Commission required temporary fixed earth stations in the C-band to operate on a secondary basis due to the shared nature of the C-band between satellite and terrestrial services.

The Commission drafted Section 25.277(e) based on the issues of frequency coordination in the C-band. However, as it currently stands, this subsection also is applicable to non-shared bands such as the Ku-band. No terrestrial coordination issues exist in the Ku-band; therefore, the applicability of this subsection to the Ku-band leads to an anomaly. A “regular” VSAT network in the Ku-band operates on a “protected” basis while a temporary fixed VSAT network must operate on a secondary non-interference basis. This is an incongruous result given that a “regular” VSAT network uses the same equipment as a temporary fixed VSAT network, and neither network impacts terrestrial operators in the non-shared Ku-band. Moreover, temporary fixed earth stations serve the public interest by providing emergency relief and other essential services. Hughes believes that this anomalous result was not the intent of this subsection. To alleviate this inconsistency, the Commission should modify Section 25.277(e) to refer only to the C-band and to other bands that are shared on a co-primary basis with terrestrial services.

⁵ Reply Comments of the Satellite Industry Association (“*Comments of SIA*”).

⁶ Comments of SIA at 17.

⁷ 47 C.F.R. 25.277(e).

⁸ *In the Matter of Western Tele-Communications, Inc. Application for developmental authority to operate a temporary fixed (transportable) earth station anywhere within the United States, and for authority pursuant to Section 214 of the Communications Act to provide video and associated audio service through these facilities*, Memorandum Opinion and Authorization, File Nos. 1559-DSE-P/L-80, W-P-C-3268 (released Sept. 30, 1981) (“*Western Tel*”).

⁹ *Western Tel* at ¶¶10, 17, n.11.

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Finally, Hughes would like to note that Section 25.277(a) provides that “[w]hen an earth station in the Fixed-Satellite Service is to remain at a single location for fewer than 6 months, the location *may* be considered to be temporary fixed.”¹⁰ A plain reading of this language indicates that it is permissive rather than mandatory. In other words, an earth station located at a particular place for 6 months or less may be either temporary fixed or “regular” fixed. Moreover, the Commission recently confirmed the permissive character of this language. In the Order on Reconsideration in *Maritime Telecommunications Network, Inc.*,¹¹ the Commission granted temporary fixed authority and denied MTN’s request for “regular” fixed authority because MTN’s proposed intermittent operations would be an inefficient use of the shared C-band spectrum. In addition, MTN requested more spectrum than it planned to use, which would preclude the use of those frequencies by terrestrial operators. The Commission emphasized that its decision to deny the request for “regular” fixed authority was based on the proposed inefficient use of the shared C-band spectrum and not because the proposed earth stations were intended to remain at a particular location for less than 6 months.¹²

In light of this history, the Commission’s proposal in the NPRM to require applicants to separately report temporary fixed terminals on their VSAT applications appears to be inconsistent with the permissive nature of Section 25.277, especially when these temporary fixed terminals are using the same equipment as the “regular” fixed terminals and are operating in non-shared bands such as the Ku-band.¹³ Hughes requests that the Commission clarify that when an earth station is to remain in a single location for fewer than 6 months, Section 25.277 permits the applicant to request temporary fixed authority but does not require this designation.

Respectfully submitted,

/s/ Dori K. Bailey

Gary Epstein
John P. Janka
Dori K. Bailey
LATHAM & WATKINS
Suite 555, Eleventh Street, N.W. Suite 1000
Washington, D.C. 20004
(202) 637-2200

¹⁰ 47 C.F.R. 25.277(a) (emphasis added).

¹¹ *In the Matter of Maritime Telecommunications Network, Inc. Application for Special Temporary Authority, Request for Special Temporary Authority to Operate Earth Stations Communicating with Satellites of New Skies Satellite, N.V., Applications for Fixed Earth Station Licenses, Request for Emergency Stay, and Request for Extension of Special Temporary Authority*, Order on Reconsideration and Memorandum Opinion and Order, DA 01-1283 (released June 5, 2001) (“MTN”).

¹² *Id.* at ¶¶8-9, 27, 29-30, 32, 34, 36.

¹³ NPRM at ¶61, n.73.